

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

|                              |   |                         |
|------------------------------|---|-------------------------|
| IN THE MATTER OF:            | : |                         |
|                              | : |                         |
| NEW CASTLE COUNTY            | : | Representation Petition |
|                              | : |                         |
| DEPARTMENT OF PUBLIC WORKS   | : | <u>No. 95-09-157</u>    |
|                              | : |                         |
| SITE INSPECTIONS SUPERVISOR. | : |                         |

Appearances

*Vance E. Sulsky, for AFSCME Council 81*  
*James D. Doctson, for New Castle County*

**BACKGROUND**

New Castle County (“County”) is a public employer within the meaning of §1302 (n) of the Public Employment Relations Act (“PERA”), 19 Del.C. Chapter 13 (1994). Delaware Pubic Employees Council 81, American Federation of State, County and Municipal Employees, AFL-CIO (“AFSCME”), is an employee organization within the meaning of §1302 (h). AFSMCE Local 1607 is the exclusive bargaining representative of the bargaining unit of County employees defined in DOL Case Nos.. 22, 25 - 31, and 52, commonly referred to as the “ white collar unit”. AFSCME Local 3109 represents two units of County employees, the unit of “Managers and Administrators” defined by DOL Case No. 100, and the unit of “Professionals” defined by DOL Case No. 159.

On September 27, 1995, AFSCME filed a petition to amend the white collar bargaining unit represented by Local 1607 to include the positions of Operations Engineer and Site Inspections Supervisor. Both positions are organizationally located within the Department of Public Works. The petition alleged the Operations Engineer was a new job title for the former bargaining unit position of Chief of Development and Licensing. The County responded to the petition by asserting that the Operations Engineer should properly be included in the bargaining unit represented by AFSCME Local

3109. AFSCME agreed to this modification and by Notice dated January 4, 1996, the Public Employment Relations Board (“PERB”) placed the position in Local 3109.<sup>1</sup>

The County further took the position that the Site Inspections Supervisor was a supervisory employee within the meaning of §1302 (p),<sup>2</sup> and was, therefore, ineligible for inclusion within any bargaining unit.

A hearing was held on January 22, 1996, to receive evidence and argument concerning the eligibility and appropriateness of including the Site Inspections Supervisor within the bargaining unit represented by AFSCME Local 1607. This is the decision resulting therefrom.

### ISSUE

Is the position of Site Inspections Supervisor, within the New Castle County Department of Public Works, eligible and appropriate for inclusion in the bargaining unit of white collar County employees represented by AFSCME Local 1607?

### POSITIONS OF THE PARTIES

#### AFSCME

AFSCME argues that the position, although admittedly a supervisory position, is eligible for bargaining unit because it was established on May 10, 1994, prior to the effective date of the PERA.<sup>3</sup>

AFSCME further argues that fairness and equity dictate the inclusion of the position, as all of the other positions organizationally located above, below and lateral to this position in the Site Management

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<sup>1</sup> Neither the County nor AFSCME clearly states in which of the two bargaining units represented by Local 3109 it intended to include this position. The PERB is currently soliciting the parties’ positions on this issue for purposes of maintaining the bargaining unit records.

<sup>2</sup> 19 Del.C. §1302(p): ‘Supervisory employee’ means any employee of a public employer who has authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or to effectively recommend such actions, if the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

<sup>3</sup> The PERA became effective on September 23, 1994.

Section of the Department of Public Works are represented by Local 1607. It asserts that to exclude this singular position from the unit would unfairly exclude one employee from the negotiated right to bump into the other positions in the event of layoffs or other reduction in County services.

### County

The County argues that the statutory exclusion of supervisory employees from bargaining units is clear. 19 Del.C. §1302(m)(7) specifically excludes supervisory employees from the definition of “public employees” covered by the PERA.<sup>4</sup> The statute further provides at §1310 (d):

.... The Board [PERB] or its designee shall exclude supervisory employees from all appropriate bargaining units created subsequent to the effective date of this Chapter.

### OPINION

The Department of Public Works includes three divisions which employ inspection personnel; the Site Management Section, the Planning and Design Section and the Development and Licensing or Operations Section. All three of these sections employ either Public Works or Code Inspectors. These employees are supervised by Construction Inspectors in each of the sections. Prior to May 10, 1994, there were two (2) Construction Inspector positions within each of the three sections. At that time only the Planning and Design section and the Development and Licensing section included a second supervisory level position, Chief Construction Inspector and Chief Field Supervisor, respectively. Each of these positions was compensated a County Pay Grade 24, and reported directly to the Chief of the respective section. All of the positions described above are represented for purposes of collective bargaining by AFSCME Local 1607.

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<sup>4</sup> 19 Del.C. §1302(m): ‘Public employee’ or ‘employee’ means any employee of a public employer except: ... (7) Supervisory employees of a public employer, provided, however, that any supervisory position in a bargaining unit deemed to be appropriate prior to the effective date of this Chapter shall so continue, unless said unit is decertified in accordance with §1311(b) of this title, or is modified in accordance with procedures authorized by §1310(e) of this title.

The Site Inspections Supervisor position was established May 10, 1994. AFSCME Exhibit 1, NCC Class Specification 0598. This position provides a second level of supervision within the Site Management section, reports directly to the Chief of Site Management and is compensated at a County Pay Grade 24. On October , 1994, the senior Construction Inspector was promoted to the Site Inspections Supervisor position. The Site Management Section now employs only one Construction Inspector.

It is undisputed that the Site Inspections Supervisor is a supervisory employee within the meaning of 19 Del.C. §1302(p). The PERA clearly excludes supervisory employees from inclusion in bargaining units created subsequent to the effective date of the Act. (Emphasis added). This position, however, was created and established on May 10, 1994, more than three (3) months prior to the September 23, 1994 effective date of the Act. The fact that the position was not filled until October , 1994, does not change the position or its eligibility for inclusion in an appropriate bargaining unit.

Having determined that the position is eligible for inclusion in a bargaining unit, the issue becomes whether this position is appropriate for inclusion in the existing white collar bargaining unit represented by AFSCME Local 1607. It is undisputed that this position performs parallel responsibilities to the positions of Chief Construction Inspector and Chief Field Supervisor. It is further undisputed that the both the employees this position supervises and the position to which this position reports are represented by AFSCME Local 1607. There is no evidence on the record to suggest that this position does not share a community of interest with the other represented positions in this department.

#### DECISION

For the reasons set forth above, the position of Site Inspections Supervisor is eligible and appropriate for inclusion in the New Castle County “white collar” bargaining unit defined by DOL Case Nos.. 22, 25 - 31, and 52, and represented by AFSCME Local 1607.

IT IS SO ORDERD.

/s/Deborah L. Murray-Sheppard  
DEBORAH L. MURRAY-SHEPPARD  
Principal Assistant/Hearing Officer  
Del. Public Employment Relations Bd.

/s/Charles D. Long, Jr.  
CHARLES D. LONG, JR.  
Executive Director  
Del. Public Employment Relations Bd.

DATED: February 27, 1996